

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TOM DOTY, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

WATKINS AND SHEPARD TRUCKING,
INC., a Montana corporation, and DOES 1-10,
inclusive,

Defendant.

Case No. 3:19-cv-05236-RBL

**STIPULATED MOTION AND ORDER
STAYING CASE PENDING (1)
WASHINGTON SUPREME COURT'S
RESOLUTION OF CERTIFIED
QUESTION IN *SAMPSON v. KNIGHT
TRANSPORTATION, INC.* AND (2) NINTH
CIRCUIT'S DECISION IN
*INTERNATIONAL BROTHERS OF
TEAMSTERS, LOCAL 2785 v. FMCSA***

1 **RECITALS**

2 **WHEREAS**, on or about February 25, 2019, Plaintiff TOM DOTY (“Plaintiff”) filed the
3 operative putative Class Action Complaint for Unpaid and Wrongfully Withheld Wages (the
4 “Complaint”) in this action in the Superior Court of the State of Washington in and for Pierce County
5 [Dkt. #1-1 (Exh. A)];

6 **WHEREAS**, on March 28, 2019, Defendant WATKINS AND SHEPARD TRUCKING,
7 INC. (“Defendant”) removed Plaintiff’s above-described state court action to this Court [Dkt. #1]
8 invoking the subject matter jurisdiction of this Court under the Class Action Fairness Act (“CAFA”),
9 which the parties agree is properly invoked in this action;

10 **PLAINTIFF’S PUTATIVE ON-DUTY, NOT-DRIVING CLAIMS**

11 **WHEREAS**, in his Complaint, Plaintiff alleges, *inter alia*, that in *Carranza v. Dovex Fruit*
12 *Co.*, 190 Wash.2d 612 (2018) (“*Carranza*”), the Washington Supreme Court “held that employers
13 who pay agricultural workers on a piece-rate basis must compensate the workers on a separate hourly
14 basis for time spent performing activities that are outside the scope of the piece rate picking work”
15 and that “Defendant’s piece-rate compensation system is virtually indistinguishable from the piece
16 rate scheme in *Carranza*” [Dkt. #1-1, ¶ 16];

17 **WHEREAS**, in his Complaint, Plaintiff further alleges that, in *Sampson v. Knight*
18 *Transportation, Inc.*, 2018 WL 2984825, at *8-9 (W.D. Wash. June 14, 2018) (Coughenour, J.), the
19 court “recogniz[ed] that while ... non-productive time claims were previously denied [class]
20 certification” and the grounds that such claims were not cognizable under Washington law, the court’s
21 prior holdings were “called into question by the Washington Supreme Court’s recent ruling in
22 *Caranza [sic]*” [Dkt. #1-1, ¶ 16];

23 **WHEREAS**, based upon Plaintiff’s interpretation of *Carranza* and *Sampson*, the Complaint
24 asserts causes of action for (1) Violations of RCW 49.46.020, 090 for Failure to Pay Minimum Wage
25 for All Hours Worked, (2) Violation of RCW 49.52.050(2) for Failure to Satisfy Wage Obligations
26 Assumed Through Contract, and (3) Double Damages for Willful and Intentional Withholding of
27 Wages Pursuant to RCW 49.52.050, 070 stemming therefrom [*id.*, ¶¶ 39-52];

1 **WHEREAS**, in support of his Second and Third Causes of Action, Plaintiff alleges that
2 “Defendant paid its truck drivers on a piece-rate scheme under which it did not compensate truck
3 drivers separately and hourly, or at all, for ... non-driving tasks as required under Washington law,”
4 including, but not limited to, “all detention time and time associated with pre and post-trip
5 inspections,” and asserts that “Plaintiff seeks relief on a class-wide basis for unpaid wages for ... all
6 work performed” [*id.*, ¶¶ 2-3; *see also id.*, at ¶¶ 13, 16-17, 42, 47];

7 **WHEREAS**, in *Sampson*, 2018 WL 2984825, at *8, currently pending but stayed in this
8 District, the plaintiffs similarly contend that the defendant’s piece-rate compensation scheme violates
9 Washington’s Minimum Wage Act (the “MWA”) because “drivers are not paid minimum wage for
10 the time they spend conducting pre-trip inspections, completing paperwork, loading and unloading
11 the truck, and refueling”;

12 **WHEREAS**, in *Sampson*, 2018 WL 2984825, at *9, the Court recognized that “[c]ourts in
13 this district ... have previously held that Plaintiffs’ on-duty, not driving claim are not cognizable
14 under Washington law,” but it reasoned that “these prior holdings are called into question by the
15 Washington Supreme Court’s recent ruling in [*Carranza*],” on the grounds that the Washington
16 Supreme Court’s “interpretation of the MWA would seem to apply to all employers,” not just
17 agricultural workers;

18 **WHEREAS**, the district court in *Sampson* “conclude[d] that the law underlying Plaintiffs’ on
19 duty, not driving claim is not clearly determined, and that the Washington Supreme Court is in a
20 better position than this Court to answer this question,” *see id.*, and therefore certified the following
21 question to the Washington Supreme Court: “Does the Washington Minimum Wage Act require non-
22 agricultural employers to pay their piece-rate employees per hour for time spent performing activities
23 outside of piece-rate work?”;

24 **WHEREAS**, briefing on the district court’s certified question in *Sampson* has been completed
25 in the Washington Supreme Court as of December 21, 2018, and the Washington Supreme Court has
26 scheduled *Sampson* for oral argument for May 16, 2019, and has not rendered its decision in that
27 proceeding;

1 **WHEREAS**, the parties agree that the Washington Supreme Court’s resolution of the
2 question certified in *Sampson* could directly impact the disposition of Plaintiff’s claims asserted in
3 this action, which assert an on-duty, not driving time unpaid wages claim similar to that asserted by
4 the plaintiffs in *Sampson*;

5 **PLAINTIFF’S PUTATIVE REST BREAK CLAIMS**

6 **WHEREAS**, in his Complaint, and relying on *Demetrio v. Sakuma Bros., Inc.*, 183 Wash.2d
7 649 (2015), and the district court’s Order Regarding the Certification of Questions to the Washington
8 Supreme Court in *Carranza v. Dovex Fruit Co.*, Case No. 2:16-cv-00054-SMJ (E.D. Wash. Jan. 19,
9 2017) [Dkt. #38], Plaintiff also alleges that, “[u]nder Washington law, employers paying employees
10 on a piece-rate scheme must pay workers for rest periods separate and apart from the piece” [Dkt. #1-
11 1, ¶ 14];

12 **WHEREAS**, based upon Plaintiff’s interpretation of *Demetrio* and *Carranza*, the Complaint
13 asserts an “Implied Cause of Action” under RCW 49.12, *et seq.*, for alleged failure to pay hourly and
14 separate wages for time spent on statutory rest periods separate and apart from and in addition piece-
15 rate pay and seeks double damages for alleged willful and intentional withholding of wages pursuant
16 to RCW 49.52.050, 070 stemming therefrom [*id.*, ¶¶ 29-38, 49-52];

17 **WHEREAS**, on or about December 21, 2018, the Federal Motor Carrier Safety
18 Administration (“FMCSA”) issued an Order granting the American Trucking Associations’ and the
19 Specialized Carriers and Rigging Association’s petition requesting a determination that California’s
20 meal and rest break rules are preempted under 39 U.S.C. § 31141 as applied to property-carrying
21 commercial motor vehicle (“CMV”) drivers, which differed from an earlier decision it had made in
22 2008 that: “FMCSA cannot entertain this petition. Because the California meal and rest break rules
23 are not “regulations on commercial motor vehicle safety,” the Agency has no authority to preempt
24 them under 49 U.S.C. 31141”;¹

25
26 ¹ See *Notice of Rejection of Petition for Preemption: “Meal and Rest Breaks for Commercial*
27 *Motor Vehicle Drivers,”* 73 Federal Register 79204-01 (FMCSA, Dec. 24, 2008), *available at*
28 <https://www.govinfo.gov/content/pkg/FR-2008-12-24/pdf/E8-30646.pdf>.

WHEREAS, the FMCSA’s December 21, 2018 Order also noted that “20 States in addition to California regulate, in varying degrees, meal and rest break requirements,” including Washington;²

WHEREAS, on December 27, 2018, the International Brotherhood of Teamsters (“IBT”) filed a Petition for Review of the FMCSA’s December 21, 2018 Order in the U.S. Court of Appeals for the Ninth Circuit, requesting the court review and reverse the FMCSA’s preemption decision, which matter has since been consolidated with three other pending appeals against the FMCSA and the U.S. Department of Transportation (“DOT”) involving the FMCSA’s preemption decision (9th Cir. Case No. 18-73488, Dkt. No. 19) by joint motion of the parties;

WHEREAS, pursuant to that same Joint Motion, the parties' in the consolidated actions have agreed that petitioners' opening briefs will be filed on April 29, 2019, and the FMCSA and DOT will file their answering briefs on May 28, 2019 (9th Cir. Case No. 18-73488, Dkt. No. 19);

WHEREAS, the parties agree that the FMCSA’s December 21, 2018 Order’s validity, significance, potential application to other states, and prospective versus retroactive applicability are all disputed legal issues, some of which may be resolved through the Ninth Circuit’s resolution of IBT’s Petition for Review, including without limitation the parties’ disputed issues of whether and to what extent the FMCSA’s December 21, 2018 Order is applicable and/or its temporal effectiveness in relation to Washington’s rest break laws, and whether and to what extent Washington’s rest break laws are preempted by the FMCSA’s hours of service regulations;

* * *

WHEREAS, the parties’ agree that a stay of this case pending (1) the Washington Supreme Court’s resolution of the certified question in *Sampson v. Knight Transportation, Inc.* (Wash. S.Ct. Case No. 96264-2), which could bear directly upon Plaintiff’s putative “on-duty, not driving” time unpaid wages claims in this action, and (2) the Ninth Circuit’s decision *International Brotherhood of Teamsters, Local 2785 v. FMCSA*, 9th Cir. Lead Case No. 18-73488, regarding the FMCSA’s

² *Id.* at pp. 37-38 & nn.13, 15.

December 21, 2018 Order, which could bear directly upon Plaintiff's putative rest break claims, would be prudent and efficient for both the Court and the parties, but with a full reservation, and without waiver or limitation, of the parties' respective rights, claims, remedies, defenses, and positions in this action including as to the issues recited above.

STIPULATION

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff, on the one hand, and Defendant, on the other hand, by and through their respective undersigned counsel, and subject to the Court's approval, that:

1. This Court has subject matter jurisdiction over this action under CAFA;

2. The dates set forth in the Court's Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement [Dkt. #8] and all other deadlines currently set in this action be vacated, including without limitation Plaintiff's deadline to move for class certification under LCR 23(i)(3);

3. This action be stayed, in its entirety and for all purposes, pending the Washington Supreme Court's decision on the certified question in *Sampson v. Knight Transportation, Inc.*, Wash. S.Ct. Case No. 96264-2, and the Ninth Circuit's decision *International Brotherhood of Teamsters, Local 2785 v. FMCSA*, 9th Cir. Case No. 18-73488 ("*IBT*"), on the International Brotherhood of Teamsters' Petition for Review of the FMCSA's Order granting a determination of preemption;

4. Within fourteen (14) days of the Washington Supreme Court's decision in *Sampson* and/or the Ninth Circuit's decision in *IBT*, whichever decision is issued first, the parties shall file a joint status report with the Court that (1) informs the Court regarding that court's decision and (2) sets forth the parties' respective and/or collective positions as to whether the stay should remain in effect pending a decision in the other action;

a. If the parties agree that the stay should be lifted after the first-issued decision, the parties' joint status report shall also provide the Court with agreed-upon and/or proposed deadlines for [i] Defendant to respond to the complaint by answer, motion, or otherwise; [ii] Plaintiff to move for class certification under

Fed. R. Civ. P. 23; and [iii] initial disclosures and submission of the parties' Joint Status Report and Discovery Plan.

- b. If the parties agree that the stay should not be lifted after the first-issued decision, the parties' joint status report shall be submitted within fourteen (14) days following the second-issued decision and shall provide the Court with agreed-upon and/or proposed deadlines for [i] Defendant to respond to the complaint by answer, motion, or otherwise; [ii] Plaintiff to move for class certification under Fed. R. Civ. P. 23; and [iii] initial disclosures and submission of the parties' Joint Status Report and Discovery Plan.

5. Unless otherwise ordered by the Court in response to the parties' joint status report as referenced above, (a) Defendant's 21-day deadline to respond to the complaint by answer, motion, or otherwise, and (b) Plaintiff's presumptive deadline under LCR 23(i)(3) to move for class certification, will commence running upon the Court lifting the stay of this action. In the event this Stipulated Motion is not granted by the Court, then those deadlines will commence running upon the Court's entry of its Order to that effect.

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6. By entering into and submitting this Stipulated Motion, the parties fully reserve, and do not waive or limit, their respective rights, claims, remedies, defenses, and positions in this action, including as to the issues recited above.

DATED: April 4, 2019

Respectfully submitted,

s/ India Lin Bodien

s/ Kasey D. Huebner

Per electronic authority 04/04/19
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1 **ORDER**

2 This matter came before the Court on the parties' Stipulated Motion Staying Case Pending
3 (1) Washington Supreme Court's Resolution of Certified Question in *Sampson v. Knight*
4 *Transportation, Inc.* and (2) Ninth Circuit's Decision in *International Brotherhood of Teamsters,*
5 *Local 2785 v. FMCSA* and (the "Stipulated Motion"). The Court, having reviewed the Stipulated
6 Motion, and good cause appearing for the relief sought therein, hereby orders as follows:

7 1. This Court has subject matter jurisdiction over this action under CAFA;

8 2. The dates set forth in the Court's Order Regarding Initial Disclosures, Joint Status
9 Report, and Early Settlement [Dkt. #8] and all other deadlines currently set in this action shall be and
10 hereby are vacated, including without limitation Plaintiff's deadline to move for class certification
11 under LCR 23(i)(3);

12 3. This action shall be and hereby is stayed, in its entirety and for all purposes, pending
13 the Washington Supreme Court's decision on the certified question in *Sampson v. Knight*
14 *Transportation, Inc.*, Wash. S.Ct. Case No. 96264-2, and the Ninth Circuit's decision in *International*
15 *Brotherhood of Teamsters, Local 2785 v. FMCSA*, 9th Cir. Lead Case No. 18-73488 ("*IBT*");

16 4. Within fourteen (14) days of the Washington Supreme Court's decision in *Sampson*
17 and/or the Ninth Circuit's decision in *IBT*, whichever decision is issued first, the parties shall file a
18 joint status report with the Court that (1) informs the Court regarding that court's decision and (2)
19 sets forth the parties' respective and/or collective positions as to whether the stay should remain in
20 effect pending a decision in the other action;

21 a. If the parties agree that the stay should be lifted after the first-issued decision,
22 the parties' joint status report shall also provide the Court with agreed-upon
23 and/or proposed deadlines for [i] Defendant to respond to the complaint by
24 answer, motion, or otherwise; [ii] Plaintiff to move for class certification under
25 Fed. R. Civ. P. 23; and [iii] initial disclosures and submission of the parties'
26 Joint Status Report and Discovery Plan.

b. If the parties agree that the stay should not be lifted after the first-issued decision, the parties' joint status report shall be submitted within fourteen (14) days following the second-issued decision and shall provide the Court with agreed-upon and/or proposed deadlines for [i] Defendant to respond to the complaint by answer, motion, or otherwise; [ii] Plaintiff to move for class certification under Fed. R. Civ. P. 23; and [iii] initial disclosures and submission of the parties' Joint Status Report and Discovery Plan.

5. Unless otherwise ordered by the Court in response to the parties' joint status report as referenced above, (a) Defendant's 21-day deadline to respond to the complaint by answer, motion, or otherwise, and (b) Plaintiff's presumptive deadline under LCR 23(i)(3) to move for class certification, will commence running upon the Court lifting the stay of this action.

6. The parties' entering into and submission of this Stipulated Motion is without waiver or limitation of their respective rights, claims, remedies, defenses, and positions in this action, including as to the issues recited therein.

IT IS SO ORDERED.

DATED this 5th day of April, 2019.

Ronald B. Lightner

Ronald B. Leighton
United States District Judge